

**MONTEBELLO OVERSIGHT BOARD
AGENDA STAFF REPORT**

TO: Honorable Chair and Members of the Oversight Board

FROM: Francesca Tucker-Schuyler, Executive Director of Successor Agency

BY: Christopher Cardinale, Successor Agency Legal Counsel

SUBJECT: Excess Bond Proceeds Expenditure Agreement

DATE: January 25, 2016

OBJECTIVE:

Obtain Oversight Board approval of an Excess Bond Proceeds Expenditure Agreement by and between the Montebello Successor Agency and the City of Montebello.

BACKGROUND:

The former Community Redevelopment Agency of the City of Montebello ("**Former Agency**") was dissolved by Assembly Bill 1x26 (as amended from time to time, the "**Dissolution Law**"), effective February 1, 2012. The Montebello Successor Agency ("**Successor Agency**") was created and tasked with overseeing the "wind down" of the Former Agency's affairs.

Upon receipt of a "finding of completion" ("**FOC**"), the Dissolution Law authorizes the Successor Agency to use remaining bond proceeds of the Former Agency "for the purpose for which the bonds were sold." If this purpose can no longer be accomplished, any remaining proceeds must be used to defease the bonds.¹

The Successor Agency's use of Former Agency bond proceeds is subject to approval by both the Montebello Oversight Board ("**Oversight Board**") and Department of Finance ("**DOF**"). This approval may be accomplished in one (1) of two (2) ways.

The first is by placing individual expenditures on a "Recognized Obligation Payment Schedule ("**ROPS**") as the need arises, and seek approval on an expenditure-by-expenditure basis.

The second option is for the Successor Agency and City to execute a "cooperative agreement," pursuant to which the Successor Agency would transfer all remaining

¹ Health & Safety Code §§ 34177(i), 34191.4(c).

Former Agency bond proceeds to the City in a “lump sum,” and the City would agree to use the proceeds for purposes consistent with the underlying bond covenants. If approved by the Oversight Board and DOF, this agreement would be listed on a single ROPS and the bond proceeds would be transferred to the City.

DISCUSSION

In or about April 2009, the Former Agency issued its Montebello Hills Redevelopment Project Tax Allocation Bonds, 2009 Series A (the “**Bonds**”), in the amount of \$10.3 million to finance redevelopment activities of benefit to Montebello Hills Redevelopment Project Area (“**Project Area**”). The specific activities anticipated to be funded with the Bonds included construction of the Taylor Ranch Community Center, street construction, and other public improvements and equipment. A copy of the Official Statement is available for review in the City’s Administration Department.

As of the date of the Former Agency’s dissolution approximately \$4.6 million of the total Bond proceeds remained. The Successor Agency received a FOC from DOF on December 16, 2015, and accordingly it now has authority to use such proceeds for purposes consistent with the Bond covenants.

To accomplish this, the Successor Agency and City have each approved the attached Bond Proceeds Expenditure Agreement. The Agreement calls for the Successor Agency’s transfer of the remaining Bond proceeds to the City, and the City’s agreement to use the proceeds for the activities outlined in the Bond documents.

If approved by the Oversight Board and DOF, the Agreement will appear on the Successor Agency’s Recognized Obligations Payment Schedule (“**ROPS**”) for the 2016-2017 Fiscal Year. The Successor Agency would then transfer the Bond proceeds to the City as early as July 1, 2016.

Successor Agency staff recommends this approach, as opposed to obtaining Oversight Board and DOF approval on an expenditure-by-expenditure basis as described above, because it will avoid delays and administrative burdens associated with Oversight Board and DOF review of individual expenditures.

Approval of the Bond Expenditure Agreement does not result in the issuance of new debt by the Successor Agency, and does not commit use of the Bond proceeds to any specific project. If the Agreement is approved and the proceeds are transferred to the City, any future use of the monies will be subject to future action by the City Council.

SUMMARY

The Oversight Board will consider approval of a Bond Proceeds Expenditure Agreement that transfers approximately \$4.6 million in remaining Bond proceeds of the Former Agency to the control of the City. If approved by the Oversight Board and DOF, the City will be able to use the Bond proceeds for purposes consistent with the Bond

documents, which include construction of the Taylor Ranch Community Center, street construction, and other public improvements and equipment beneficial to the Montebello Hills Project Area.

FISCAL IMPACT

There is no impact to the Real Property Tax Trust Fund associated with this action, as the Bond Expenditure Agreement will be funded with unexpended bond proceeds of the Former Agency.

RECOMMENDATION:

Staff recommends that Oversight Board adopt a Resolution approving a Bond Proceeds Expenditure Agreement between the Montebello Successor Agency and the City of Montebello.

ATTACHMENTS:

- 1) Oversight Board Resolution
- 2) Bond Proceeds Expenditure Agreement

BOND EXPENDITURE AGREEMENT

This Bond Expenditure Agreement (“**Agreement**”) is entered into on January 13, 2016, by and between the City of Montebello, a California municipal corporation (the “**City**”), and the Successor Agency to the former Community Redevelopment Agency of the City of Montebello (“**Successor Agency**”).

RECITALS

A. The Successor Agency received its Finding of Completion (“**FOC**”) under Health and Safety Code Sections 34179.7 from the California Department of Finance (“**DOF**”) on December 16, 2015.

B. Health and Safety Code Section 34191.4(c) allows a successor agency that has received a FOC to use bond proceeds from bonds issued by a redevelopment agency prior to 2011 for purposes for which the bonds were sold, states that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute “excess bond proceeds” obligations that shall be listed separately on the successor agency’s Recognized Obligation Payment Schedule (“**ROPS**”).

C. Prior to its dissolution and in or about April 2009, the former Community Redevelopment Agency of the City of Montebello (“**Former Agency**”) issued its Montebello Hills Redevelopment Project Tax Allocation Bonds, Series A, in the principal amount of \$10,495,000 (the “**Bonds**”), for the purpose of financing certain redevelopment activities of the Former Agency, including construction of the Taylor Ranch Community Center, street construction, and other public improvements and equipment of benefit to the Montebello Hills Redevelopment Project Area (“**Project Area**”).

D. As of the date of this Agreement, Four Million Six Hundred Sixty Six Thousand Seven Hundred Thirty One Dollars and Forty Eight Cents (\$4,666,731.48) of the proceeds of the Bonds have not been expended (“Excess Proceeds”), and the Successor Agency currently possesses the Excess Proceeds.

E. The Community Redevelopment Law (Health & Safety Code Section 33000, *et seq.*) provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies that have assumed the duties and obligations of the former redevelopment agencies. Under Health and Safety Code Section 33220, a city may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. Health & Safety Code Section 33220(e) specifically authorizes a city to enter into an agreement with its redevelopment agency or any other public entity to further redevelopment purposes.

F. Health and Safety Code Section 34178 authorizes a successor agency to enter into an agreement with the city that formed the former redevelopment agency that it is succeeding, subject to the approval of its oversight board. Health & Safety Code Section 34177.3 authorizes

a successor agency to create an “enforceable obligation” to conduct the work of winding down the former redevelopment agency.

G. The Successor Agency desires to provide the Excess Proceeds to the City, and the City desires to accept the Excess Proceeds from the Successor Agency, to enable the City to use such funds in a manner consistent with the original Bond covenants, and to undertake projects and programs that were not previously funded and obligated by the Successor Agency or City.

H. In order to facilitate the use of the Excess Proceeds consistent with the Bond covenants, the Successor Agency and City have negotiated this Agreement requiring the Successor Agency’s transfer of the Excess Proceeds to the City, in exchange for the City’s agreement and warranty to use the Excess Proceeds for purposes consistent with the Bond documents and applicable laws. The Parties intend that this Agreement shall constitute an “excess bond proceeds obligation” within the meaning of Health and Safety Code Section 34191.4(c)(1)(A) to be paid from the Excess Proceeds. With approval from the Montebello Oversight Board and DOF, the Successor Agency shall list this Agreement, and the requirement to transfer the Excess Proceeds to the City, on its ROPS for 2016-2017 Fiscal Year as an obligation to be funded with excess bond proceeds.

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. Recitals.

The recitals above are an integral part of this Agreement and set for the intentions of the parties and the premises on which the parties have decided to enter into this Agreement.

2. Successor Agency’s Obligations

The Successor Agency shall have the following obligations under this Agreement.

A. Inclusion of Agreement on ROPS. Subject to the approval of the Montebello Oversight Board and DOF, the Successor Agency shall include this Agreement on ROPS 16-17. The Successor Agency shall take all necessary and appropriate action(s) necessary to obtain Oversight Board and DOF approval of this Agreement and its inclusion on ROPS 16-17.

B. Transfer of Excess Proceeds. Subject to Oversight Board and DOF approval of this Agreement and ROPS 16-17, the Successor Agency shall transfer to the City, no early than July 1, 2016, and not later than June 30, 2017, the Excess Bond proceeds in the amount of \$4,666,731.48, plus all interest accrued thereon up to the date of such transfer.

C. Projects to be Funded by Excess Proceeds. The Successor Agency assigns to the City all responsibilities and contracts, if any, related to the administration of any projects or programs funded by the Excess Proceeds.

3. City's Obligations

A. Retention of Excess Bond Proceeds. The City shall accept, hold, and disburse the Excess Proceeds transferred to the City pursuant to this Agreement. The City shall retain any Excess Proceeds that it receives, such as revenue generated from properties acquired or improved with Excess Proceeds or payments on loans funded from Excess Proceeds, without any obligation to return such funds to the Successor Agency, and shall use such funds for purposes consistent with applicable Bond covenants.

B. Use of Excess Proceeds. The City may spend the Excess Proceeds received or retained under this Agreement on any project, program, or activity authorized by the City Council of the City of Montebello. However, the City must spend Excess Proceeds consistent with the original Bond covenants applicable to the particular Excess Proceeds, and must comply with all requirements of applicable law, including federal tax law and all applicable requirements of the California Community Redevelopment Law, as to the use of such funds. The City shall be responsible for ensuring the Excess Proceeds are maintained and spent in accordance with Bond covenants and other applicable laws.

C. Indemnification. The City shall indemnify and defend the Successor Agency, and its officers, agents, employees, and representatives, from and against, and shall defend the Successor Agency, and its officers, agents, employees, and representatives, harmless from all claims, causes of action, or liabilities arising from the misuse of the Excess Proceeds by the City, or the failure of the City to ensure the Excess Proceeds are used in accordance with Bond covenants and applicable laws.

D. Assumption of Contracts. The City assumes all contracts, if any, entered into by the Successor Agency or Former Agency related to activities to be funded by the Excess Proceeds, with the exception of those contracts retained by the Successor Agency relating to "enforceable obligations." The City shall perform its obligations hereunder, and under such assumed contracts, in accordance with the applicable provisions of federal, state, and local laws, including the obligation to comply with environmental laws such as CEQA, and shall timely complete the work required for each project.

4. Entire Agreement

This Agreement constitutes the entire understanding and agreement of the parties with respect to the transfer and use of the Excess Proceeds. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

5. No Third-Party Beneficiaries

This Agreement is intended solely for the benefit of the City and Successor Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Successor Agency, there shall be no third party beneficiaries under this Agreement.

6. Waivers / Amendments

All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

7. Severability

If any term, provisions, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding, or unenforceability. In addition, the parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

8. Default

If either party fails to perform or adequately perform an obligation required by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract or to seek specific performance. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party.

9. Binding on Successors

This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

10. Further Assurances

Each party agrees to execute, acknowledge, and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of this Agreement.

11. Effectiveness

This Agreement shall become effective upon the date first set forth above, subject to requisite approvals by the Montebello Oversight Board and DOF, and shall continue in effect until the date that all Excess Proceeds are expended in accordance with the requirements of this Agreement.

IN WITNESS WHEREOF, the undersigned parties have caused executed this Agreement as of the date first written above.

THE CITY OF MONTEBELLO

By _____
Art Barajas, Mayor

ATTEST

By _____
Irma Barajas, City Clerk

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman,
City Attorney

MONTEBELLO SUCCESSOR AGENCY

By _____
Art Barajas, Chair

ATTEST

By _____
Irma Barajas, Secretary

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman,
Agency Counsel

OB RESOLUTION NO. _____

**A RESOLUTION OF MONTEBELLO OVERSIGHT BOARD
APPROVING A BOND PROCEEDS EXPENDITURE AGREEMENT
BETWEEN THE MONTEBELLO SUCCESSOR AGENCY AND THE
CITY OF MONTEBELLO**

WHEREAS, pursuant to Assembly Bill 1x26 (as amended from time to time, the “Dissolution Law”) the Community Redevelopment Agency of the City of Montebello (the “Former Agency”) has been dissolved and no longer exists as a public body, corporate and politic;

WHEREAS, the City of Montebello elected to serve as the Successor Agency to the Former Agency (“Successor Agency”) pursuant to Health & Safety Code Section 34173 (and all subsequently statutory references being to such Code), and the Montebello Oversight Board (“Oversight Board”) is the statutorily created oversight board for the Successor Agency;

WHEREAS, prior to its dissolution and in or about April 2009, the Former Agency issued its Montebello Hills Redevelopment Project Tax Allocation Bonds, Series A, in the principal amount of \$10,495,000 (the “Bonds”) for the purpose of financing certain redevelopment activities of the Former Agency, including construction of the Taylor Ranch Community Center, street construction, and other public improvements and equipment of benefit to the Montebello Hills Redevelopment Project Area;

WHEREAS, there remain unexpended proceeds of the Bonds in the amount of \$4,666,731.48 (“Excess Proceeds”);

WHEREAS, in August 2015, the Successor Agency issued its Subordinate Tax Allocation Refunding Bonds, Series 2015A, which refunded the Bonds to reduce the interest rate on the debt service due thereon, but did not impact the amount or purpose of the Excess Proceeds;

WHEREAS, on December 16, 2015, the Successor Agency received a Finding of Completion (“FOC”) from the California Department of Finance;

WHEREAS, pursuant to Sections 34177(i) and 34191.4(c), successor agencies that have received a FOC are authorized to use bond proceeds derived from bonds issued on or before December 31, 2010, by their respective redevelopment agency for the purpose(s) for which the bonds were issued and consistent with the bond documents;

WHEREAS, Section 31478 authorizes a successor agency to enter into an agreement with the city that formed the redevelopment agency that it is succeeding upon the approval of its oversight board;

WHEREAS, Section 34177.3 authorizes a successor agency to create enforceable obligations to conduct the work of winding down the former redevelopment agencies;

WHEREAS, the Successor Agency and City have approved the attached Bond Proceeds Expenditure Agreement (the “Agreement”), pursuant to which the Successor Agency will transfer the Excess Proceeds to the City, and the City will agree to utilize the Excess Proceeds for purposes for which the Former Agency Bonds were issued and consistent with the Bond documents;

WHEREAS, the Agreement is subject to approval by the Oversight Board and California Department of Finance (“DOF”); and

WHEREAS, the Oversight Board has reviewed the Agreement, and finds that transferring the Excess Proceeds to the City will further the purposes and objectives of the Dissolution Law, in that it will expedite the “wind down” of the Former Agency’s affairs and conserve resources of the Successor Agency, the Oversight Board, and of applicable taxing entities, and that the City is in the best position and possesses the specific knowledge, skill, and resources to use the Excess Proceeds for purposes consistent with the Former Agency Bond documents.

NOW THEREFORE, THE MONTEBELLO OVERSIGHT BOARD HEREBY FINDS, DECLARES AND RESOLVES AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part hereof.

SECTION 2. The Oversight Board hereby approves the attached Agreement, subject to approval by DOF and the inclusion of the Agreement on a Recognized Obligation Payment Schedule (“**ROPS**”) of the Successor Agency.

SECTION 3. The Oversight Board directs Successor Agency staff to take such further action(s) as required to obtain approval of the Agreement and its inclusion on a ROPS of the Successor Agency.

SECTION 4. The Secretary shall certify to the passage and adoption of this Resolution, which shall become effective immediately upon adoption.

PASSED, APPROVED and ADOPTED this 25th day of January, 2016.

Richard Bruckner,
Oversight Board Chair

ATTEST:

Oversight Board Secretary

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the Montebello Oversight Board at its meeting held on the 25th day of January 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Oversight Board Secretary